

FILED

OCT 28 2003

LARRY W. PROPPS, CLERK
COLUMBIA, SC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Roxanne Cordonier a/k/a Roxanne
Walker,

Plaintiff,

vs.

Clear Channel Communications, Inc., d/b/a
Clear Channel Broadcasting, Inc., Clear
Channel Metroplex, Inc., Clear Channel
Satellite Services, Inc., WMYI-FM, Bill
McMartin and Greg McKinney,

Defendants.

Civil Action No. 6:03-2576-25

DEFENDANT'S REPLY TO
PLAINTIFF'S OBJECTIONS TO
MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION

Pursuant to Rule 72(b) of the Federal Rules of Civil Procedures, Defendants file this Reply to Plaintiff's Objections to the Report and Recommendation of the Magistrate Judge.

Plaintiff Roxanne Cordonier filed this lawsuit on July 22, 2003, in South Carolina state court alleging that she was wrongfully terminated by Defendants in violation of South Carolina Code § 16-17-560. Defendants timely removed the case to this Court based on federal question jurisdiction, 28 U.S.C. § 1441(a), (b), and (c), and Plaintiff filed a motion to remand. On October 9, 2003, the Magistrate Judge issued his Report recommending that this action be stayed pending the Fourth Circuit's *en banc* rehearing and decision in *Dixon v. Coburg Dairy*,

Inc., 330 F.3d 250 (4th Cir. 2003), which is currently scheduled for oral argument in December 2003.¹

Plaintiff filed Objections to the Report of the Magistrate Judge on October 14, “to the extent that the Report of the Magistrate holds that Plaintiff’s claims are encompassed within the holding of *Dixon v. Coburg Dairy, Inc.*, 330 F.3d 250 (4th Cir. 2003)” and further stated “it is not necessary to wait for [the rehearing in *Dixon*] to decide this case.” Plaintiff’s Objections to Magistrate Judge’s Report at pp. 2-3.

Defendants believe, however, that the Magistrate Judge’s recommendation to stay this action pending the Fourth Circuit’s *en banc* decision is well-reasoned. As explained by the Magistrate Judge, in *Dixon* the Fourth Circuit affirmed the removal of an action alleging, as this lawsuit does, that the plaintiff’s employment was terminated in violation of S.C. Code § 16-17-560. The Court found in *Dixon* that federal jurisdiction existed solely based on the plaintiff’s claims for wrongful discharge pursuant to § 16-17-560.

Because Plaintiff here likewise alleges that her termination was in violation of § 16-17-560, the Fourth Circuit’s upcoming decision in *Dixon* likely will be dispositive of the issue, and it is only prudent to postpone any decision on Plaintiff’s Motion to Remand until the Fourth Circuit’s rehearing and *en banc* decision in *Dixon*. Doing so would be fair, makes common sense, and would serve judicial economy.

¹ Defendants also filed a motion to dismiss or, in the alternative, to stay proceedings and compel arbitration based upon an arbitration agreement between Plaintiff and Defendant Clear Channel Communications, Inc. Plaintiff moved to stay the entry of any scheduling order and the filing of a response in opposition to Defendant’s motion to dismiss pending resolution of Plaintiff’s motion to remand. The Magistrate Judge recommended that Plaintiff’s motion to stay be granted and Defendants have no objection to that recommendation at this time.

CONCLUSION

For the foregoing reasons, and as outlined in the Magistrate Judge's Report and Recommendation, Defendants request that the Court adopt the Magistrate Judge's Report and Recommendation in its entirety.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

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October 28, 2003

CERTIFICATE OF SERVICE

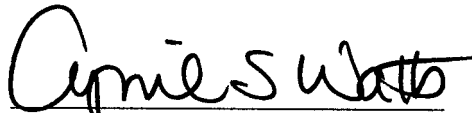
I, the undersigned Assistant of the law offices of Nelson Mullins Riley & Scarborough, L.L.P., attorneys for defendants, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

DEFENDANT'S REPLY TO PLAINTIFF'S OBJECTIONS TO
MAGISTRATE JUDGE'S REPORT AND
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10/28, 2003